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8 Attorneys for Defendant TETRA TECH, INC.

9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 CRAIG MASON, PATRICIA HEALEY, and  
12 GARY GOODRICH, Individually and on  
Behalf of All Other Similarly Situated Persons,

13 Plaintiffs,

14 vs.

15 ASHBRIIT, INC.; TETRA TECH, INC.; and  
16 DOES 1 through 100, inclusive,

17 Defendants.

Case No: 4:19-cv-01062-DMR

**DEFENDANT TETRA TECH, INC.'S  
ANSWER TO FIFTH AMENDED CLASS  
ACTION COMPLAINT FOR DAMAGES**

Date Action Filed: February 26, 2019

1 Defendant Tetra Tech, Inc. (“Tetra Tech”), by and through its undersigned counsel,  
2 hereby responds to the Fourth Amended Complaint (“4AC”) of Plaintiff and the Putative Class  
3 as follows:

4 1. In response to Paragraph 1, Tetra Tech lacks sufficient knowledge or information  
5 to admit or deny whether Plaintiff or the putative class are property owners and residents of  
6 Northern California affected by the wildfires of October 2017, and on that basis denies the  
7 allegation. Tetra Tech denies the remaining allegations in Paragraph 1 as to itself. Tetra Tech  
8 lacks sufficient knowledge or information to admit or deny those allegations as to any other  
9 Defendant and denies them on that basis.

10 2. In response to Paragraph 2, Tetra Tech denies all allegations as to itself. Tetra  
11 Tech lacks sufficient knowledge or information to admit or deny the allegations as to any other  
12 Defendant and denies them on that basis.

13 3. In response to Paragraph 3, Tetra Tech notes that Paragraph 4 is simply a  
14 summary of relief sought by Plaintiffs, not an allegation, and that no response is required.

15 **JURISDICTION AND VENUE**

16 4. In response to Paragraph 4, Tetra Tech submits that the allegations contained in  
17 paragraph 5 consist of legal conclusions, legal opinions, and/or recitations of purported law,  
18 requiring no response.

19 5. In response to Paragraph 5, Tetra Tech submits that the allegations contained in  
20 paragraph 6 consist of legal conclusions, legal opinions, and/or recitations of purported law,  
21 requiring no response.

22 6. In response to Paragraph 6, Tetra Tech admits that it performs business in  
23 California and is a resident of the state of California. Tetra Tech denies the remaining  
24 allegations of Paragraph 6, or that any acts or omissions of Tetra Tech give rise to any of the  
25 claims.

26 **PARTIES**

27 7. In response to Paragraph 7, Tetra Tech lacks sufficient knowledge or information  
28 to admit or deny whether Plaintiff is a California resident and real property owner and on that

1 basis denies the allegation. Tetra Tech denies the remaining allegations in Paragraph 7 as to  
2 itself. Tetra Tech lacks sufficient knowledge or information to admit or deny those allegations as  
3 to any other Defendant and denies them on that basis.

4 8. In response to Paragraph 8, Tetra Tech admits that AshBritt is a Florida  
5 corporation with a principal place of business located at 565 E. Hillsboro Drive, in Deerfield  
6 Beach, Florida. As to all other allegations in Paragraph 8, Tetra Tech lacks sufficient knowledge  
7 or information to admit or deny the allegations therein and on that basis denies them.

8 9. In response to Paragraph 9, Tetra Tech admits that it is a California corporation  
9 with a principal place of business located at 3475 E. Foothill Boulevard in Pasadena, California,  
10 and that it performs work in California. Tetra Tech also admits that it is in the business of  
11 consulting, engineering, program management, and construction management. Tetra Tech also  
12 admits that it entered into a contract with AshBritt. The terms of that contract speak for itself.  
13 As to all other allegations in Paragraph 9, Tetra Tech lacks sufficient knowledge or information  
14 to admit or deny the allegations therein and on that basis denies them.

15 10. In response to Paragraph 10, Tetra Tech lacks sufficient knowledge or  
16 information to admit or deny the allegations therein and on that basis denies them.

17 **CLASS ACTION ALLEGATIONS**

18 11. In response to Paragraph 11, Tetra Tech notes that this paragraph simply defines  
19 the putative class, contains no allegations, and therefore does not require a response. To the  
20 extent that this paragraph contains any allegations, Tetra Tech denies them. Tetra Tech further  
21 denies that the proposed class is appropriate under Federal Rule of Civil Procedure 23.

22 11a. In response to Paragraph 11(a), Tetra Tech denies the allegations of Paragraph  
23 11(a).

24 12. In response to Paragraph 12, Tetra Tech denies the allegations of Paragraph 12.

25 13. In response to Paragraph 13, Tetra Tech denies the allegations of Paragraph 13.

26 14. In response to Paragraph 14, Tetra Tech denies the allegations of Paragraph 14.

27 15. In response to Paragraph 15, Tetra Tech denies the allegations of Paragraph 15.

28 16. In response to Paragraph 16, Tetra Tech denies the allegations of Paragraph 16.

17. In response to Paragraph 17, Tetra Tech notes that this paragraph contains no allegations, and therefore does not require a response. To the extent that this paragraph contains an allegation, Tetra Tech denies that management of this litigation as a class proceeding will pose no difficulties.

## FACTUAL ALLEGATIONS

18. In response to Paragraph 18, Tetra Tech admits that in October 2017 wildfires occurred in Northern California in Sonoma, Napa, Mendocino, and Lake Counties. Tetra Tech lacks sufficient knowledge or information to admit or deny the remaining allegations therein and on that basis denies them.

19. In response to Paragraph 19, Tetra Tech lacks sufficient knowledge or information to admit or deny the allegations therein and on that basis denies them.

20. In response to Paragraph 20, Tetra Tech lacks sufficient knowledge or information to admit or deny the allegations therein and on that basis denies them.

21. In response to Paragraph 21, Tetra Tech admits that AshBritt entered into a contract with the United States Army Corps of Engineers. The terms of that contract speak for itself. Tetra Tech lacks sufficient knowledge or information to admit or deny the remaining allegations and on that basis denies them.

22. In response to Paragraph 22, Tetra Tech admits that AshBritt entered into a contract with the United States Army Corps of Engineers. The terms of that contract speak for itself. Tetra Tech admits that the sections copied in this paragraph are verbatim from the contract entered into between AshBritt and the United States Army Corps of Engineers. Tetra Tech lacks sufficient knowledge or information to admit or deny the remaining allegations therein and on that basis denies them.

23. In response to Paragraph 23, Tetra Tech admits that it entered into a contract with AshBritt, although that contract was executed in November 2017 and not October 2017. The terms of that contract speak for itself. Tetra Tech lacks sufficient knowledge or information to admit or deny the remaining allegations therein and on that basis denies them.

24. In response to Paragraph 24, Tetra Tech lacks sufficient knowledge or

1 information to admit or deny the remaining allegations therein and on that basis denies them.

2           25. In response to Paragraph 25, admits that AshBritt entered into a contract with the  
3 United States Army Corps of Engineers. The terms of that contract speak for itself. Tetra Tech  
4 admits that the contract between AshBritt and the United States Army Corps of Engineers  
5 required the removal of 3 to 6 inches of soil from the surface of properties. Tetra Tech also  
6 admits that the contract required the sampling and analysis of the remaining soil, and that  
7 depending on certain test results the contract required re-sampling and the removal of additional  
8 small layers of soil. Tetra Tech denies any allegations in this paragraph to the extent they are  
9 intended to differ from the express terms of the contract. Tetra Tech lacks sufficient knowledge  
10 or information to admit or deny the remaining allegations therein and on that basis denies them.

11           26. In response to Paragraph 26, Tetra Tech denies the allegations as to itself. Tetra  
12 Tech lacks sufficient knowledge or information to admit or deny the allegations as to any other  
13 Defendant and denies them on that basis.

14           27. In response to Paragraph 27, Tetra Tech lacks sufficient knowledge or  
15 information to admit or deny the allegations as to any other Defendant or unidentified property  
16 owner and denies them on that basis.

17           28. In response to Paragraph 28, Tetra Tech lacks sufficient knowledge or  
18 information to admit or deny the allegations as to any other Defendant or unidentified property  
19 owner and denies them on that basis.

20           29. In response to Paragraph 29, Tetra Tech denies the allegations.

21           30. In response to Paragraph 30, Tetra Tech admits that the California Office of  
22 Emergency Services sent a letter dated August 22, 2018 to the United States Army Corps of  
23 Engineers. The content of that letter speaks for itself. Tetra Tech admits that the letter contains  
24 the excerpted text. To the extent that Paragraph 30 contains allegations as to the content,  
25 purpose, and character of that letter, Tetra Tech denies the allegations as to itself, but lacks  
26 sufficient knowledge or information to admit or deny the allegations as to any other Defendant  
27 and denies them on that basis.

28           31. In response to Paragraph 31, Tetra Tech denies any allegations to the extent they

1 are purportedly applicable to Tetra Tech. Tetra Tech lacks sufficient knowledge or information  
2 to admit or deny the allegations otherwise and denies them on that basis.

3 32. In response to Paragraph 32, Tetra Tech admits that it had employees present at  
4 each location before work at each location was completed. Tetra Tech lacks sufficient  
5 knowledge or information to admit or deny the allegations as to any other Defendant and denies  
6 them on that basis.

7 33. In response to Paragraph 33, Tetra Tech denies the allegations as to itself. Tetra  
8 Tech lacks sufficient knowledge or information to admit or deny the allegations as to any other  
9 Defendant and denies them on that basis.

10 34. In response to Paragraph 34, Tetra Tech admits that AshBritt entered into a  
11 contract with the United States Army Corps of Engineers. The terms of that contract speak for  
12 itself. However, Tetra Tech admits only that the contract included terms related to the removal  
13 of trees. Otherwise, Tetra Tech denies the allegations of Paragraph 34 as to itself. Tetra Tech  
14 lacks sufficient knowledge or information to admit or deny that allegation as to any other  
15 Defendant and denies them on that basis.

16 35. In response to Paragraph 35, Tetra Tech lacks sufficient knowledge or  
17 information to admit or deny the allegations and denies them on that basis.

18 36. In response to Paragraph 36, Tetra Tech denies the allegations to the extent they  
19 implicate any wrongdoing on the part of Tetra Tech. Tetra Tech lacks sufficient knowledge or  
20 information to admit or deny the remaining allegations and denies them on that basis.

21 37. In response to Paragraph 37, Tetra Tech lacks sufficient knowledge or  
22 information to admit or deny the allegations as to any other Defendant and denies them on that  
23 basis.

24 38. In response to Paragraph 38, Tetra Tech denies the allegations as to itself. Tetra  
25 Tech lacks sufficient knowledge or information to admit or deny the allegations as to any other  
26 Defendant and denies them on that basis.

27 39. In response to Paragraph 39, Tetra Tech denies any allegations that implicate the  
28 conduct of Tetra Tech. Tetra Tech lacks sufficient knowledge or information to admit or deny

1 the remaining allegations and denies them on that basis.

2 40. In response to Paragraph 40, Tetra Tech denies any allegations that implicate the  
3 conduct of Tetra Tech. Tetra Tech lacks sufficient knowledge or information to admit or deny  
4 the remaining allegations and denies them on that basis.

5 **CALIFORNIA STATE LAW CLAIMS**

6 41. In response to Paragraph 41, Tetra Tech notes that this paragraph contains no  
7 allegations, and therefore does not require a response. However, Tetra Tech denies any  
8 allegations to the extent they are intended to implicate the conduct of Tetra Tech.

9 42. In response to Paragraph 42, Tetra Tech admits that it entered into a contract with  
10 AshBritt. The terms of the contract speak for itself. Tetra Tech denies the remaining allegations  
11 as to itself. Tetra Tech lacks sufficient knowledge or information to admit or deny the allegations  
12 as to any other Defendant and denies them on that basis.

13 **FIRST CAUSE OF ACTION**

14 **UNFAIR & UNLAWFUL BUSINESS PRACTICES**

15 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

16 43. In response to Paragraph 43, Tetra Tech reincorporates its above responses by  
17 reference.

18 44. In response to Paragraph 44, Tetra Tech admits that the quoted text appears in the  
19 referenced statute. Tetra Tech denies the remaining allegations as to itself. Tetra Tech lacks  
20 sufficient knowledge or information to admit or deny those allegations as to any other Defendant  
21 and denies them on that basis.

22 45. In response to Paragraph 45 (and subparagraphs a through c), Tetra Tech denies  
23 the allegations as to itself. Tetra Tech lacks sufficient knowledge or information to admit or  
24 deny the allegations as to any other Defendant and denies them on that basis.

25 46. In response to Paragraph 46, Tetra Tech denies the allegation as to itself. Tetra  
26 Tech lacks sufficient knowledge or information to admit or deny that allegation as to any other  
27 Defendant and denies it on that basis.

28 47. In response to Paragraph 47, Tetra Tech lacks sufficient knowledge or

1 information to admit or deny the allegations and denies them on that basis.

2 48. In response to Paragraph 48, Tetra Tech denies the allegations as to itself. Tetra  
3 Tech lacks sufficient knowledge or information to admit or deny the allegations as to any other  
4 Defendant and denies them on that basis.

5 49. In response to Paragraph 49, Tetra Tech denies the allegations as to itself. Tetra  
6 Tech lacks sufficient knowledge or information to admit or deny the allegations as to any other  
7 Defendant and denies them on that basis.

8 50. In response to Paragraph 50, Tetra Tech denies the allegations as to itself. Tetra  
9 Tech lacks sufficient knowledge or information to admit or deny the allegations as to any other  
10 Defendant and denies them on that basis.

11 51. In response to Paragraph 51, Tetra Tech notes that this is a summary of Plaintiffs'  
12 legal argument, not an allegation, and therefore requires no response. To the extent that this  
13 paragraph contains allegations as to Defendants' conduct, Tetra Tech denies those allegations as  
14 to itself. Tetra Tech lacks sufficient knowledge or information to admit or deny those allegations  
15 as to any other Defendant and denies them on that basis.

## 16 **SECOND CAUSE OF ACTION**

### 17 **TRESPASS**

18 52. In response to Paragraph 52, Tetra Tech reincorporates its above responses by  
19 reference.

20 53. In response to Paragraph 53, Tetra Tech lacks sufficient knowledge or  
21 information to admit or deny the allegations and denies them on that basis.

22 54. In response to Paragraph 54, Tetra Tech admits that AshBritt entered into a  
23 contract with the United States Army Corps of Engineers. The terms of that contract speak for  
24 itself. However, Tetra Tech denies any allegations to the extent they are intended to implicate  
25 the conduct of Tetra Tech. Tetra Tech lacks sufficient knowledge or information to admit or  
26 deny the remaining allegations and denies them on that basis.

27 55. In response to Paragraph 55, Tetra Tech denies the allegations as to itself. Tetra  
28 Tech lacks sufficient knowledge or information to admit or deny the allegations as to any other

1 Defendant and denies them on that basis.

2 56. In response to Paragraph 56, Tetra Tech denies that it exceeded Plaintiffs'  
3 permission to enter their properties. Tetra Tech lacks sufficient knowledge or information to  
4 admit or deny this allegation as to any other Defendant and denies it on that basis.

5 57. In response to Paragraph 57, Tetra Tech denies the allegations as to itself. Tetra  
6 Tech lacks sufficient knowledge or information to admit or deny the allegations as to any other  
7 Defendant and denies them on that basis.

8 58. In response to Paragraph 58, Tetra Tech denies the allegations as to itself. Tetra  
9 Tech lacks sufficient knowledge or information to admit or deny the allegations as to any other  
10 Defendant and denies them on that basis.

### 11 **THIRD CAUSE OF ACTION**

#### 12 **CONVERSION**

13 59. In response to Paragraph 59, Tetra Tech reincorporates its above responses by  
14 reference.

15 60. In response to Paragraph 60, Tetra Tech lacks sufficient knowledge or  
16 information to admit or deny the allegations and denies them on that basis.

17 61. In response to Paragraph 61, Tetra Tech denies the allegations as to itself. Tetra  
18 Tech lacks sufficient knowledge or information to admit or deny the allegations as to any other  
19 Defendant and denies them on that basis.

20 62. In response to Paragraph 62, Tetra Tech admits that AshBritt entered into a  
21 contract with the United States Army Corps of Engineers. The terms of that contract speak for  
22 itself. However, Tetra Tech denies any allegations to the extent they are intended to implicate  
23 the conduct of Tetra Tech. Tetra Tech lacks sufficient knowledge or information to admit or  
24 deny the remaining allegations and denies them on that basis.

25 63. In response to Paragraph 63, Tetra Tech denies the allegations as to itself. Tetra  
26 Tech lacks sufficient knowledge or information to admit or deny the allegations as to any other  
27 Defendant and denies them on that basis.

28 64. In response to Paragraph 64, Tetra Tech denies the allegations as to itself. Tetra

1 Tech lacks sufficient knowledge or information to admit or deny the allegations as to any other  
2 Defendant and denies them on that basis.

3 65. In response to Paragraph 65, Tetra Tech denies the allegations as to itself. Tetra  
4 Tech lacks sufficient knowledge or information to admit or deny the allegations as to any other  
5 Defendant and denies them on that basis.

6 66. In response to Paragraph 66, Tetra Tech denies the allegations as to itself. Tetra  
7 Tech lacks sufficient knowledge or information to admit or deny the allegations as to any other  
8 Defendant and denies them on that basis.

9 67. In response to Paragraph 67, Tetra Tech denies the allegations as to itself. Tetra  
10 Tech lacks sufficient knowledge or information to admit or deny the allegations as to any other  
11 Defendant and denies them on that basis.

#### 12 **FOURTH CAUSE OF ACTION**

#### 13 **TRESPASS TO CHATTELS**

14 68. In response to Paragraph 68, Tetra Tech reincorporates its above responses by  
15 reference.

16 69. In response to Paragraph 69, Tetra Tech lacks sufficient knowledge or  
17 information to admit or deny the allegations and denies them on that basis.

18 70. In response to Paragraph 70, Tetra Tech denies the allegations as to itself. Tetra  
19 Tech lacks sufficient knowledge or information to admit or deny the allegations as to any other  
20 Defendant and denies them on that basis.

21 71. In response to Paragraph 71, Tetra Tech admits that AshBritt entered into a  
22 contract with the United States Army Corps of Engineers. The terms of that contract speak for  
23 itself. However, Tetra Tech denies any allegations to the extent they are intended to implicate  
24 the conduct of Tetra Tech. Tetra Tech lacks sufficient knowledge or information to admit or  
25 deny the remaining allegations and denies them on that basis.

26 72. In response to Paragraph 72, Tetra Tech denies the allegations as to itself. Tetra  
27 Tech lacks sufficient knowledge or information to admit or deny the allegations as to any other  
28 Defendant and denies them on that basis.

73. In response to Paragraph 73, Tetra Tech denies the allegations as to itself. Tetra Tech lacks sufficient knowledge or information to admit or deny the allegations as to any other Defendant and denies them on that basis.

74. In response to Paragraph 74, Tetra Tech denies the allegations as to itself. Tetra Tech lacks sufficient knowledge or information to admit or deny the allegations as to any other Defendant and denies them on that basis.

75. In response to Paragraph 75, Tetra Tech denies the allegations as to itself. Tetra Tech lacks sufficient knowledge or information to admit or deny the allegations as to any other Defendant and denies them on that basis.

76. In response to Paragraph 76, Tetra Tech denies the allegations as to itself. Tetra Tech lacks sufficient knowledge or information to admit or deny the allegations as to any other Defendant and denies them on that basis.

## **PRAYER FOR RELIEF**

77. The paragraphs in the section entitled “Prayer for Relief” are Plaintiffs’ requests for relief, not allegations, and no response is therefore required.

## **TETRA TECH'S AFFIRMATIVE DEFENSES**

## FIRST AFFIRMATIVE DEFENSE

## Statute of Limitations

78. This action is barred by the applicable statutes of limitations. Applicable statute of limitations include, but are not limited to the statutes of limitations set forth in California Code of Civil Procedure §§ 335.1, 340, 338 and California Business and Professions Code § 17208.

## SECOND AFFIRMATIVE DEFENSE

## Laches

79. This action is barred by virtue of Plaintiff and the putative class members' unreasonable delay in commencing this action, which delay has caused prejudice to DEFENDANT, the claims and each purported cause of action alleged therein against DEFENDANT is barred by the doctrine of laches, in whole or in part.

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1 **THIRD AFFIRMATIVE DEFENSE**

2 **Waiver**

3 80. As a result of the acts, conduct and omissions of Plaintiff and the putative class  
4 members, Plaintiffs and the putative class members have waived their right to assert each and  
5 every purported cause of action contained in the Complaint, in whole or in part.

6 **FOURTH AFFIRMATIVE DEFENSE**

7 **Unclean Hands**

8 81. This action is barred by the doctrine of unclean hands.

9 **FIFTH AFFIRMATIVE DEFENSE**

10 **No Duty**

11 82. As the Complaint and each cause of action therein, Tetra Tech owed no duty to  
12 Plaintiff or the putative class.

13 **SIXTH AFFIRMATIVE DEFENSE**

14 **No Breach**

15 83. As the Complaint and each cause of action therein, Tetra Tech did not breach any  
16 duty owed to Plaintiff or the Putative Class.

17 **SEVENTH AFFIRMATIVE DEFENSE**

18 **No Causation**

19 84. As to the Complaint, and each purported cause of action therein, and without  
20 admitting that Tetra Tech engaged in or is liable for any acts of conduct attributed to it in the  
21 Complaint, any damages and injuries purportedly sustained by Plaintiff and the putative class  
22 members are not the result of any act or omission on the part of Tetra Tech.

23 **EIGHTH AFFIRMATIVE DEFENSE**

24 **Superseding Cause**

25 85. Plaintiff and the putative class members are not entitled to the prayed-for relief  
26 against Tetra Tech because the harms for which Plaintiff and putative class members seek that  
27 relief resulted from the intervening and/or superseding acts of a third party.

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**NINTH AFFIRMATIVE DEFENSE**

**Comparative Fault/Negligence**

86. As to the Complaint, and each purported cause of action therein, the acts of Plaintiff and the putative class members were so careless, reckless and negligent as to cause and contribute in some degree to the alleged incident and to the damages and injuries, if any, alleged to have been sustained, and thus reduce any right to recovery by that amount which their negligence contributed to this incident.

**TENTH AFFIRMATIVE DEFENSE**

**No Damages**

87. Plaintiff and the putative class members are not entitled to the prayed-for relief against Tetra Tech because the harms for which Plaintiff and the putative class members seek that relief resulted in no harm.

**ELEVENTH AFFIRMATIVE DEFENSE**

**No Falsity**

88. This action is barred in full or in part because Tetra Tech made no false representations and or misrepresentations to Plaintiff and the putative class members, Defendants, entities or third parties.

**TWELFTH AFFIRMATIVE DEFENSE**

**No Intent**

89. This action is barred in full or in part because Tetra Tech lacked the requisite intent to prove any causes of action with such element.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**Good Faith and Reasonable Care**

90. This action is barred in full or in part because Tetra Tech exercised good faith and reasonable care as to the matters alleged in the Complaint, and had no knowledge of any wrongdoing in connection with Plaintiff and the putative class members.

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1 **FOURTEENTH AFFIRMATIVE DEFENSE**

2 **Failure to State a Claim**

3 91. Plaintiff and the putative class have failed to state a claim upon which relief can  
4 be granted.

5 **FIFTEENTH AFFIRMATIVE DEFENSE**

6 **Negligence of Others**

7 92. The injuries and damages for which Plaintiff and the putative class members seek  
8 recovery were directly and proximately caused or contributed to by the acts, omissions or  
9 negligence of other parties, persons, and entities.

10 **SIXTEENTH AFFIRMATIVE DEFENSE**

11 **Estoppel**

12 93. Plaintiff and the putative class members are estopped from recovering any relief  
13 against Tetra Tech on the basis of their allegations.

14 **SEVENTEENTH AFFIRMATIVE DEFENSE**

15 **Assumption of the Risk**

16 94. Plaintiff and the putative class members assumed the risk of the loss described by  
17 their allegations.

18 **EIGHTEENTH AFFIRMATIVE DEFENSE**

19 **Failure to Mitigate**

20 95. Plaintiff and the putative class failed to mitigate any damages and any recovery  
21 should be reduced or eliminated.

22 **NINETEENTH AFFIRMATIVE DEFENSE**

23 **No Standing**

24 96. Plaintiff and the putative class have no standing to bring this action under Article  
25 III of the United States Constitution.

26 **TWENTIETH AFFIRMATIVE DEFENSE**

27 **Consent or Ratification**

28 97. The Complaint and each and every cause of action therein are barred by

1 Plaintiff's and the putative class members' and/or other parties' consent and ratification of acts.

2 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

3 **Collateral Estoppel or Res Judicata**

4 98. The Complaint and each and every cause of action therein are barred by the  
5 doctrines of collateral estoppel or res judicata.

6 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

7 **Lawful Entry**

8 99. Tetra Tech was not responsible for any harm because any entry on to the  
9 properties of Plaintiff or the putative class, if any by Tetra Tech, was lawful because it was  
10 necessary, or reasonably appeared necessary, to enter those properties.

11 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

12 **Justified Entry**

13 100. Tetra Tech was not responsible for any harm because entry onto the properties of  
14 Plaintiff or the putative class members, if any by Tetra Tech, was justified and privileged.

15 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

16 **No Trespass**

17 101. Any entry onto the properties of Plaintiff or the putative class was not trespass  
18 because it was done to abate a public nuisance such that it did not amount to trespass.

19 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

20 **Consent to Entry**

21 102. Plaintiff and the putative class members cannot recover any damages from any  
22 alleged entry to real property by Tetra Tech because Plaintiff and the putative class members  
23 consented to such entry.

24 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

25 **Release**

26 103. The Complaint and each cause of action therein are barred by the doctrine of  
27 release.

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1 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

2 **Speculative Damages**

3 104. Any purported injuries for which Plaintiff and the putative class members seek  
4 recovery as alleged in the Complaint, are completely speculative in nature, such that they cannot  
5 recover damages.

6 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

7 **Abandonment**

8 105. Any property which the Plaintiff and the putative class members claim was  
9 converted by Tetra Tech, if any there was, was abandoned by Plaintiff and the putative class  
10 members.

11 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

12 **Lack of Monetary Value**

13 106. There cannot be any recovery for any property which the Plaintiff and the putative  
14 class members claim was converted because that property lacked any monetary value

15 **THIRTIETH AFFIRMATIVE DEFENSE**

16 **Preemption**

17 107. The Complaint and each cause of action therein are barred because Federal Law  
18 preempts recovery.

19 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

20 **Set-Off**

21 108. The claims of Plaintiff and the putative class members are reduced or eliminated  
22 by the doctrine of set-off.

23 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

24 **Indemnification**

25 109. If there is any liability existed on the part of Tetra Tech, any such liability is to be  
26 indemnified in part or in whole by other defendants or third parties.

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1 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

2 **No Unlawful, Fraudulent Business Practices**

3 110. Tetra Tech did not conduct, benefit from or engage in any unfair, unlawful,  
4 deceptive or fraudulent business acts and practices; nor did this Tetra Tech engage in unfair  
5 competition or business practices for any purpose within in the meaning of California Business  
6 and Professions Code section 17200 *et seq.*

7 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

8 **Class Action Cannot Be Maintained**

9 111. Tetra Tech alleges that this suit may not be properly maintained as a class action  
10 because: (1) Plaintiff has failed to plead, and cannot establish the necessary procedural elements  
11 for class treatment; (2) a class action is not an appropriate method for the fair and efficient  
12 adjudication of the claims described in the Complaint; (3) common issues of fact or law do not  
13 predominate; to the contrary, individual issues predominate; (4) Plaintiff's claims are not  
14 representative or typical of the claims of the putative class; (5) Plaintiff is not a proper class  
15 representative; (6) the named Plaintiff is not an adequate representative for the alleged putative  
16 class; (7) Plaintiff cannot satisfy any of the requirements for class action treatment, and the class  
17 action treatment is neither appropriate nor constitutional; (8) there is not a well-defined  
18 community of interest in the questions of law or fact affecting Plaintiff and the members of the  
19 alleged putative class; and (9) the alleged putative class is not ascertainable, nor are its members  
20 identifiable.

21 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

22 **Opposition to Class**

23 112. Tetra Tech opposes class certification and disputes the propriety of class  
24 treatment. If the Court certifies a class in this case over Tetra Tech's objections; then Tetra Tech  
25 asserts the affirmative defenses set forth herein against each and every member of the certified  
26 class.

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1 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

2 **No Attorneys' Fees**

3 113. Tetra Tech objects to Plaintiff's attempt to recover attorneys' fees because there is  
4 no such basis under contract, statute, or law.

5 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

6 **No Civil or Statutory Penalties**

7 114. Tetra Tech objects to Plaintiff's attempt to recover civil or statutory penalties  
8 because none of Plaintiff's claims permits such recovery.

9 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

10 **Derivative Immunity**

11 115. This action is barred by the doctrine of derivative sovereign immunity. *See*  
12 *Yearsley v. W.A. Ross Construction*, 309 U.S. 18 (1940); *Boyle v. United Technologies Corp.*,  
13 487 U.S. 500 (1988); *Myers v. United States*, 323 F.2d 580 (9th Cir. 1963); *Perkins v. United*  
14 *States*, 1:07cv1185 LG-RHW, 2009 U.S. Dist. LEXIS 75688 (S.D. Miss. Aug. 21, 2009).

15 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

16 **Benefit Outweighs Impact**

17 116. The cause of action for unfair business practices should be barred because the  
18 benefits of the alleged unfair business practices outweigh the particular harm or impact it caused  
19 or may cause to an alleged victim, thus the business practice, if any, was or is not unfair under  
20 California Business & Professions Code section 1700 *et seq.*

21 **FORTIETH AFFIRMATIVE DEFENSE**

22 **No Unjust Enrichment**

23 117. Plaintiff and the putative class members have not suffered losses as set forth in the  
24 Complaint, and Tetra Tech has not been unjustly enriched as a result of any action or inaction by  
25 this Tetra Tech or its agents. Plaintiff and the putative class members are therefore not entitled  
26 to any disgorgement or restitution.

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1 **FORTY-FIRST AFFIRMATIVE DEFENSE**

2 **Conduct not Contrary to Public Welfare**

3 118. Tetra Tech did not conduct, act or operate in any manner contrary to the public  
4 welfare or important rights of public interest. Any conduct, actions or operations undertaken by  
5 Tetra Tech, if any there were, were not immoral, unethical, oppressive or unscrupulous; and  
6 therefore, any conduct, actions or operations, if any, did not result in harm to the public

7 **FORTH-SECOND AFFIRMATIVE DEFENSE**

8 **No Relief under CCP 1021.5**

9 119. Tetra Tech alleges that any and all requests sought by Plaintiff and the putative  
10 class members for restitution, disgorgement and all other relief is barred under California Code  
11 of Civil Procedure section 1021.5, in that no conduct, action or operation violated the public  
12 welfare or important rights affecting the public interest.

13 **FORTY-THIRD AFFIRMATIVE DEFENSE**

14 **Conspiracy**

15 120. Tetra Tech did not conspire to commit, engage in any scheme or agreement, nor  
16 planned with any Defendants, persons, entities or third parties with the intent to engage or  
17 cooperate in a wrongful act that resulted in harm to Plaintiff and the putative class members.

18 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

19 **Constitutional Violation**

20 121. Tetra Tech alleges that the adjudication of the claims by Plaintiff and the putative  
21 class members through generalized class wide proof may violate Tetra Tech's right to trial by  
22 jury guaranteed by and under the United States Constitutions.

23 **FORTY-FIFTH AFFIRMATIVE DEFENSE**

24 **No Injunctive Relief**

25 122. Tetra Tech alleges that the purported allegations and causes of actions contained  
26 in the Complaint fail to properly state a claim for injunctive relief.

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**FORTY-SIXTH AFFIRMATIVE DEFENSE**

**Adequate Remedy at Law**

123. Tetra Tech alleges that Plaintiff and the putative class members had an adequate remedy at law, thus any relief, including but not limited to injunctive relief is inappropriate.

**FORTY-SEVENTH AFFIRMATIVE DEFENSE**

**Additional Defense**

124. Tetra Tech presently has insufficient knowledge or information on which to form a belief as to whether it may have additional, unstated affirmative defenses. Tetra Tech reserves the right to file an amended answer asserting additional affirmative defenses in the event that investigation or discovery indicates that it is appropriate.

Date: April 17, 2020

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